IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.59 OF 2007
WITH
CIVIL APPLICATION NO.89 OF 2007

Santosh Singh Jain. ..Appellant.

V/s.

The Municipal Corpn.for Gr.Mumbai
& Anr. ..Respondents.

Mr.Anil Singh for S.R.Saudagar for appellant.

Mrs. Geeta Joglekar of BMC.

Mr.S.P.Srivastava, for Respondent No.2.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 21, 2007.

P.C. :

1. Heard counsel for the parties. I see no infirmity in the approach or the conclusion reached by the trial Court for considering prayer for ad-interim relief. The only document that is pressed into service even before this Court is the Assessment bill which pertains to year 1973. It is not necessary for this Court to go into the authenticity of the said bill. The fact remains that there is no document to remotely indicate the existence of the structure prior to datum line i.e. April, 1962. If it is so, the structure is not a protected structure and no fault can be found in the proposed action of

the Corporation. In this view of the matter, question of granting ad-interim relief does not arise.

2. Counsel for the appellant would then contend that his structure is in existence for sufficiently long time and it is possible to regularise the structure. Counsel for the Corporation however, disputes the correctness of this submission and would contend that the structure would be in breach of permissible FSI. This aspect will have to be considered by the appropriate authority. The appellant may apply to the Executive Engineer(Building Proposal) H & K ward, for regularisation of the suit structure- which application will be considered on its own merits in accordance with the law. The application may be made within three weeks from today and the authority will take decision on the said application within four weeks thereafter. In any case, entire process will have to be concluded within 8 weeks from today. In the event, authority is of the view that the structure can be regularised, may proceed to pass suitable orders as may be permitted by law. If the authority takes the view that the structure cannot be regularised, the appellant through counsel undertakes

to remove the structure within two weeks from the order to be passed by the competent authority, failing which the Corporation may proceed to demolish suit structure in accordance with the law. Till the proposed regularisation application is disposed of and two weeks from the communication of such order to the appellant is not over, Corporation shall not take any precipitative action in respect of the suit structure.

3. Appeal as well as civil application disposed of on the above terms.